

BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH

IN RE THE APPLICATION OF:

RANDY LAMAR BLOOMQUIST
1081 East Birchbrook Circle
Cottonwood Height, UT 84047

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2008-149-LC
Enf. Case No. 2285

Mark E. Kleinfield,
Presiding Officer

License Pending

STATEMENT OF THE CASE

THIS MATTER concerning whether the Applicant's application for an individual resident producer license should be denied came on to be heard before the Commissioner of the Utah State Insurance Department ("Department") on Thursdsy, December 18, 2008 at 2:00 o'clock P. M. Mountain Time, with Mark E. Kleinfield, Administrative Law Judge, serving as designated Presiding Officer.

Said hearing being held at the Department's offices located at the Utah State Office Building, Room 3112, Salt Lake City, Utah 84114, having been convened at the designated time of 2:00 (2:08) P. M., December 18, 2008 and adjourned at 2:39 P. M. on said same day.

Appearances:

M. Gale Lemmon, Enforcement Counsel, Attorney for Utah State Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

Randy Lamar Bloomquist, Applicant, 1081 East Birchbrook Circle, Cottonwood Heights, Utah 84047, pro se.

By the Presiding Officer:

Pursuant to an December 1, 2008 Notice of Conversion to Formal Proceeding and Notice of Hearing a Formal Hearing was conducted on December 18, 2008 in the above-entitled proceeding. The Applicant was present at that time.

The hearing was convened and conducted as a **formal hearing** in accordance with Utah Code Ann. Sections 63G-4-204, 63G-4-205, 63G-4-206, 63G-4-207 and 63G-4-208 and Administrative Rule R590-160-6.

ISSUE, BURDEN and "STANDARD OF PROOF"

1. The basic issue in the present matter is:

a. Was Applicant's application for a resident producer's license improperly denied?

b Has the Applicant presented sufficient evidence to show that the Department's denial was not justified on the record?

c. Has the Applicant presented sufficient evidence that would justify the reversal of such denial? (SEE Paragraph 2 under *DISCUSSION-ANALYSIS*.)

2. The "*burden of proof*" or "*burden of going forward*" as to the above issue(s) is on the Applicant.

3. As per Utah Administrative Code Rule, R590-160-5(10) as to the above and foregoing "issue(s)" or "question(s)" to be answered the "*standard of proof*" as to issues of fact as to both matters is to be proven by a "*preponderance of the evidence*".

Complainant waived an opening statement. Applicant reserved than gave a brief opening statement combined with his testimony.

Thereafter, evidence was offered and received.

SUMMARY OF THE EVIDENCE

Witnesses:

For the Department:

1. Julie Ann Chytraus, Licensing Specialist, Producer Licensing Division, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

FINDINGS OF FACT

I, find by a preponderance of the evidence, the following facts:

1. The Utah Insurance Department (“Department”) is a governmental entity of the State of Utah. The Department as per Utah Code Ann. Section 31A-2-101 is empowered to administer the *Insurance Code*, Title 31A, Utah Code Ann., 1953, as amended.

2. The Applicant, Randy Lamar Bloomquist:

a. is a resident of the State of Utah and maintains a present residence of 1081 East Birchbrook Circle, Cottonwood Heights, Utah 84047

and

b. has not previously been nor is presently licensed by the Department as a resident “Producer” to conduct or be engaged in the insurance business in the State of Utah.¹

3. The Applicant on or about September 9, 2008 filed his application with the Department for issuance of a resident “*Producer*” license.

4. The Department on or about October 2, 2008 in writing denied Applicant's “application for a Utah resident producer individual license dated September 9, 2008” for the following reasons:

“Providing information in the license application that was incorrect, misleading, or materially untrue; and

Failure to pay one or more final judgment rendered against you in this state.”

5. That included in said denial were instructions informing Applicant of his right to an “*informal hearing*” if a timely request is made in writing within fifteen (15) days. (SEE Administrative File.)

6. The Applicant under date of October 11, 2008 filed his “*request for hearing*” with the Department on October 15, 2008. (SEE Administrative File.)

7. That based on the preliminary facts as set forth in paragraphs 1 through 6, immediately above, through means of a December 1, 2008 “Notice of Conversion to Formal Proceeding and Notice of Hearing”, mailed to the Applicant at his referenced

¹ The Applicant at the hearing referenced he having had a life insurance producer license which he let lapse.

2. Randall Overstreet, Director, Producer Licensing Division, Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

For the Applicant:

1. Randy Lamar Bloomquist, Applicant.

All of whom were sworn and testified.

Exhibits:

The Department offered the following exhibits:

While the Department did not tender any formal exhibits it did present the following items already part of the Administrative file:

1. Copy of Applicant's September 9, 2008 application.
2. Criminal history of Applicant.
3. Two (2) Utah State Tax Commission lien records.
4. October 2, 2008 letter of denial from Department to Applicant.
5. Applicant's October 11, 2008 request for hearing.

SEE file.

The Applicant offered the following exhibits:

None.

Argument followed.

The Presiding Officer being fully advised in the premises and taking administrative notice of the files and records of the Department, now enters his *Findings of Fact, Conclusions of Law, and Order*, on behalf of the Department:

business address on December 1, 2008, this present hearing was set for December 18, 2008 at 2:00 P. M..

DISCUSSION-ANALYSIS

1. a. Both the Applicant and the Department in large measure advocating a similar characterization or interpretation of the above referenced facts in substance concurred as to the basic *chronology* and core facts.

b. The record now being complete sets forth competent and credible evidence for the entry of the following analysis.

2. Applicant at the hearing openly acknowledged his criminal conviction, although it was not referenced on the application it being an apparent petty theft almost 20 years ago.

3. The Applicant also has at least two (2) outstanding state tax lien judgments for 2005 and 2006 state income taxes.²

4. The Applicant while not disclosing his criminal conviction in the application explained or offered that he was somewhat hazy over the circumstances which were close to 20 years ago. Such arguably is understandable and in reality would not in the Hearing Officer's mind be the prime impediment to issuing a license.

b. The real problem is the outstanding tax liens. Section 31A-23a-111(5)(b)(xxi) creates for want of a better word(s) an absolute bar when an individual "fails to: (A) pay state income tax".

5. a. The Applicant at the hearing was sincere as well as frank.

b. The Hearing Officer had an opportunity to observe the Applicant. The Applicant appears more than of average intelligence. Applicant as stated is to the Hearing Officer's mind sincere and that despite difficult circumstances that he is earnestly striving to turn his life around and that he has a real sense of direction. The Applicant's present difficulties coming as the consequences of an unfortunate accident which has left him on disability.

c. To be frank the Hearing Officer would reverse the Department's decision but for the outstanding tax liens.³

² \$6,007.42 for 2005 and \$3,647.17 for 2006.

³ The hearing having been held on December 18, 2008 the Hearing Officer at the hearing stating he would "hold" the matter for thirty (30) days until January 19, 2009 to see if the tax liens could be resolved. Unfortunately this apparently has not taken place as no further contact has been had by the Applicant to the Department.

6. Unfortunately as restrained by the Utah Insurance Code the Department in licensing the Applicant or any individual in comparable circumstances to the Applicant would be breaching its statutory responsibilities to the public. The administrative process being legal rather than equitable which equity clearly should but cannot apply in the present instance.

7. a. The Presiding Officer while having heard the witnesses and reviewed the documentary evidence cannot peer into the heart, mind and conscience of any witness to assist him or her in making the most appropriate decision. The Presiding Officer can only look at and weigh the **present** evidence before him.

b. Here in the **present** instance the burden is/was on the Applicant to:

i. **Present** sufficient evidence to show that the Department's denial was not justified on the record; and

ii. **Present** sufficient evidence that would justify the reversal of such denial.

c. This the Applicant has failed to do.

d. The Applicant's September 9, 2008 application was properly denied based on the record before the Department.

BASED ON THE ABOVE AND FOREGOING FINDINGS OF FACT and discussion-analysis the Presiding Officer enters the following:

CONCLUSIONS OF LAW

1. The Department's "*letter of denial*" under date of October 2, 2008 should be sustained.

2. The Applicant's September 9, 2008 application for licensure as a resident "*Producer*" should be denied.

AND BASED ON THE ABOVE AND FOREGOING CONCLUSIONS OF LAW

the Presiding Officer enters the following:

ORDER

WHEREFORE, IT IS ORDERED that:


1. The Department's "*letter of denial*" under date of October 2, 2008 is **sustained**; and

2. The Applicant's September 9, 2008 application for licensure as a resident "Producer" is **denied**.

DATED and ENTERED this 22 day of January, 2009.

**D. KENT MICHIE,
INSURANCE COMMISSIONER**




MARK E. KLEINFELD
ADMINISTRATIVE LAW JUDGE and
PRESIDING OFFICER
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, Utah 84114
Telephone: (801) 537-9246
Facsimile: (801) 538-3829
Email: MKleinfeld@utah.gov

ADMINISTRATIVE AGENCY REVIEW

Administrative Agency Review of this Order may be obtained by filing a Petition for Review with the Commissioner of the Utah Insurance Department within thirty (30) days of the date of entry of said Order consistent with Utah Code Ann. Section 63G-4-301 and Administrative Rule R590-160-8.

Failure to seek agency review shall be considered a failure to exhaust administrative remedies. (R590-160-8 and Section 63G-4-401)

JUDICIAL REVIEW

As an "**Formal Hearing**" after agency review judicial review of this Order may be obtained by filing a petition for such review consistent with Utah Code Ann. Section 63G-4-403.

CERTIFICATE OF MAILING

I do hereby certify that on this date I mailed, by regular mail, postage prepaid a true and correct copy of the attached:

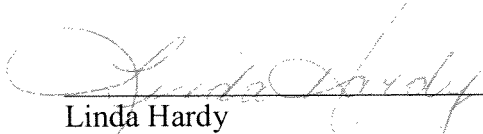
ORDER ON HEARING

License Denied

To the following:

Randy Lamar Bloomquist
1081 East Birchbrook Circle
Cottonwood Heights, UT 84047

DATED this 22nd day of January, 2009.


Linda Hardy Court Clerk
Utah Department of Insurance
State Office Building, Room 3110
Salt Lake City, UT 84114-6901